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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,288	08/20/2003	Francis Luca Conte	23FLC31	4031
20185	7590	08/30/2006	EXAMINER	
FRANCIS L CONTE 6 PURITAN AVENUE SWAMPSCOTT, MA 01907			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/643,288

Applicant(s)

CONTE, FRANCIS LUCA

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. The indicated allowability of claims 1-20 is withdrawn in view of the newly discovered reference to White. Rejections based on the newly cited reference(s) follow.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by White (US 1,779,507).

The patent to White shows an insect swatter having an elongated rod 1 having a proximal end at extension 10 and a distal end 3 as shown in Fig. 1. White shows an elastic lash including a pair of annular rubber bands as disclosed in lines 87-90 on page 1 joined together at knots 19, 19 there between. White shows three rubber bands but also contemplates 1 or 2. The proximal end is fixedly joined to the rod distal end 4 and an opposite end sized for being elastically stretched from the rod distal end to adjacent the rod proximal end so that release of the lash distal end spontaneously contracts the lash for swatting the lash distal end against an insect. In White, the rubber bands can be considered to fixedly attached or joined to the rod distal end since in the position shown in Fig. 1, the front rubber band is attached to the front sight 4 until the swatter's

trigger is pulled. In reference to claims 4 and 6, White performs the method steps recited.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over White as applied to claims 1-6 above, and further in view of Watkins (US 2642057).

The patent to White shows a swatter as discussed above as shown in Fig. 1. White does not show a keyhole slot, but uses the front sight to attach the rubber bands. The patent to Watkins shows a rubber band gun having a keyhole slot 34 to dispose a rubber band 14 therein. In reference to claims 7 and 17-20, it would have been obvious to provide White with a keyhole slot as shown by Watkins since merely one mechanically equivalent fastening means is being exchanged for another and the function is the same. In reference to claim 8, the combination of White as modified by Watkins performs the method as recited. In reference to claim 18, White shows a handgrip 2 joined to the proximal end of the rod opposite the distal end of the rod. White shows a latch 10 pivotally joined to the handgrip for releasably latching the lash second loop. White shows a trigger 13 operatively joined to the latch for releasing the latch upon pulling the trigger. In reference to claim 19, White shows three rubber bands

joined together in series at a pair of knots. Inherently the collective spring rate is equal to the reciprocal of the sum of the reciprocals of the spring rates of each of the rubber bands. In reference to claim 20, the rubber bands of White appear to be identical in size, cross section, and material composition and have equal lengths and the knot is midway between the first and second and third loops.

5. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over White as applied to claims 1-6 above, and further in view of Robinson (US 102,594).

The patent to White shows a rubber band gun as discussed above and does not show a keyhole slot. The patent to Robinson shows a swatter having an elastic cord C which is taken to be the equivalent of a rubber band and a rod having distal and proximal ends. Robinson shows a keyhole slot extending downwardly at the front of the gun to mount the elastic cord in as shown in Figs. 1-2. In reference to claims 7 and 9, it would have been obvious to provide the swatter of White with a downwardly extending keyhole slot as shown by Robinson since merely one mechanically equivalent connector is being substituted for another and the function is the same. In reference to claim 11, White shows a thumb grip 9. In reference to claim 12, White shows springs 15, 16 joined between the trigger and the handgrip. White shows the trigger being pivotable between a cocked position while holding the latch in a cocked position and a fired position for releasing the latch. In reference to claim 13, the combination of White in view of Robinson performs the recited method. In reference to claim 15, White does not

disclose the cocked length is at least three times the unstretched length, but it would have been obvious to stretch the rubber band as far as possible to its maximum stretchable length to obtain maximum range from the rubber band gun. In reference to claim 16, White contemplates the first and second bands having equal lengths to position the knot midway between the cocked length.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins in view of White.

The patents to Watkins and White show rubber band guns and have been discussed above. In reference to claims 1 and 17, Watkins shows all of the elements recited in claim 1 such as the elongate rod 10 having a slot 34 at a distal end with the exception of the elastic lash being a pair of annular rubber bands joined together at a knot there between. White shows a rubber band gun having a pair of annular rubber bands joined together at a knot there between. It would have been obvious to provide Watkins with a pair of rubber bands as shown by White for the purpose of extending the range of the rubber band gun and/or reduce the stress on the rubber bands since by using two the stress would be reduced. In regard to claim 2, the combination of Watkins in view of White performs the method steps of stretching the lash, aiming the distal end at a target, and releasing the lash. It would have been obvious to shot at an insect for the purpose of providing satisfaction to the user. In reference to claim 3, it is not clear if the pin 18 of pivots, but it would have been obvious to provide Watkins with a pivoting latch as shown by White for the purpose of a crisp release of the latch to increase the accuracy of the rubber band gun. In reference to claim 4, the combination of Watkins as modified

by White shows stretching the lash by pulling the distal end generally parallel to the rod while placing the knot mediate the rod, latching the lash distal end to latch, and aiming the distal rod end at a target, and releasing the latch. It would have been obvious to aim the rod distal end at an insect since they are an abundant target that needs control. In reference to claim 5, both Watkins and White show gun handgrips such as 12 in Watkins. It would have been obvious to pivotally join the latch to the handgrip for the purpose of leasing the lash near the user's hand. In reference to claim 6 In reference to claim 7, Watkins shows a keyhole slot 34 and when combined with White, one rubber band would be placed into the keyhole slot 34 and the other connected rubber band would be attached to pusher element 16. In reference to claim 9, Watkins shows the keyhole slot extending vertically upward while claim 9 recites that the slot is open downwardly. However, it would have been obvious to reverse the slot of Watkins to open downwardly since the function is the same and no stated problem is solved. See In re Japikse, 86 USPQ 70 which states that the rearrangement of the location of parts is obvious. In reference to claim 11, White shows a thumb grip 9 extending generally perpendicularly from the latch 10. In reference to claim 12, White shows spring 16 between the tripper 13 and the handgrip 2. The trigger is pivotable between a cocked position holding the latch and a fired position releasing the latch. In reference to claim 15, Watkins and White do not disclose that the cocked length is at least three times the length of the unstretched lash, but it would have been obvious to employ a cocked length of three times the unstretched length since the greater amount the rubber band is stretched the more energy is stored which would aid in the range of the rubber band

gun. Note Watkins, column 3, lines 29-37. In reference to claim 16, White appears to show the first and second rubber bands as having equal lengths and the knot is positioned midway between the cocked length. However, White does not state this. At any rate, it would have been obvious to provide the rubber band gun of Watkins with two or three knotted rubber bands as disclosed by White having equal lengths for the purpose of extending the range of the rubber band gun. In reference to claim 19, inherently the rubber band gun of Watkins as modified by White would have a spring rate equal to the reciprocal of the sum of the of the reciprocal of the spring rates of each of the rubber bands. In reference to claim 20, White does not disclose if the rubber bands are the same size, have the same cross-section and material composition. However, it would have been obvious to provide the rubber band gun of Watkins as modified by White with identical rubber bands and to position the knot midway between the first and second loop since the function is the same and no showing of criticality was made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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